IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTIETH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 9032 of 1994

Between:

M/s. Sri Srinivasa Conductors,

Rajam, Srikakulam Dist. **..... PETITIONER**

AND

1.The A.P. State Electricity Board,

rep. by Secretary, Vidyut Soudha,

Khairatabad, Hyderabad
2.The Chief Engineer Electricity,
Vidyut Soudha, Hyderabad-28
3.The Govt. of A.P., rep. by Secretary
Industries & Commerce Dept., Secretariat Buildings,
Hyderabad
4.The General Manager,

District Industries Centre, Srikakulam**. ....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or an order or a direction more particularly one in the nature of Writ of Mandamus declaring the letter No.CEP/EP3/A1/PM7777/PM8031/716 dt: 23-4-94 of the 2nd respondent as highly illegal, arbitrary, unjust void and without jurisdiction and set aside the same and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.D.V.NAGARJUNA BABU

Counsel for the Respondent Nos.1 & 2: None Appeared.

Counsel for the Respondent Nos.3 & 4: GP FOR INDUSTRIES & COMMERCE, Spl. G.P. for Taxes.

The Court made the following :

ORDER: (PER Sri Bilal Nazki, J)

Heard learned Counsel for the petitioner. Government Pleader for Industries and Special Government Pleader for Commercial Taxes are present. No body appears for the Electricity Board. We have heard learned G.P. for Commercial Taxes. The controversy is very short.

In the writ petition, an order passed by the Chief Engineer Electricity (P&MM), has been challenged by which, he ordered recovery of Sales Tax. By impugned order, the petitioner was informed that he was granted exemption under G.O.Ms.No.498 Industries & Commerce(IA) Department dated 16-10-1989, from collecting the Sales Tax and since, the petitioner has collected Sales Tax for all the supplies made to Board, therefore, he should pay back the amount of Sales Tax collected from the Chief Engineer.

The learned Counsel for the petitioner has drawn our attention to this scheme and also to an order passed by the Industries Department giving benefit of the scheme under G.O.Ms.No.498 to the petitioner. Under this scheme, the petitioner was granted annual deferment of tax for an amount of Rs.17,97,755/- by August, 1993. Since the petitioner had already been granted the benefit of deferment under this scheme, therefore, he was entitled to collect the tax because this tax had to be paid by him to the Government after the stipulated period and the sanction also stipulated the conditions that in case the tax was not reimbursed on due date, there would be 18% interest chargeable on the amount of tax due. Since the amount of the tax collected by the petitioner was not to be retained by him beyond a particular period of time, therefore, he was authorized and well within his rights to charge Sales Tax from the respondents. As such, the impugned letter was without authority and jurisdiction.

Therefore, the writ petition is allowed and the impugned letter dated 23-4-1994 is quashed. However, the learned Counsel appearing for Commercial Department submits that although the period of deferment was over, yet the petitioner has not paid the deferred tax till date. This is not the matter, which we will

have to go in this writ petition. However, the Commercial Department would be at liberty to take steps for recovery in accordance with law. Copy shall be marked to the Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad. No costs.

(BILAL NAZKI, J)

30th August, 2004

(S.ANANDA REDDY, J)

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Monday, the thirtieth day of Ausuts, Two thousand and four.

REGISTRAR

Copy to:

1.The Secretary, A.P.S.E.B.,

Vidyut Soudha, Khairtabad.
2.The Chief Engineer Electricity,
Vidyut Soudha, Hyderabad-028.
3.The Secretary, Government of A.P.,

Industries and Commerce Department,

Secretariat Buildings, Hyderabad.
4.The General Manager,
District Industries Centre,

Ranga Reddy District.

5.Two CCs to the G.P. for Industries,

High Court Buildings, High Court of A.P.,

Hyderabad.(O.U.T)

6.The Commissioner of Commercial Taxes,

Andhra Pradesh, Hyderabad.

7.Two CD copies.